



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MAY 28, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0702

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 3	13.080 - Use of Department Vehicles 12. Employees Will Not Use a Department Vehicle for Reasons Outside the Course and Scope of Their Job Duties.	Not Sustained (Unfounded)

#### **Imposed Discipline**

Written Reprimand

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 19. Employees Must Disclose Conflicts	Not Sustained (Lawful and Proper)

#### **Named Employee #3**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

It was alleged that Named Employee #1 may have violated the law and acted unprofessionally during a domestic incident. It was further alleged that Named Employee #1 improperly used a taskforce vehicle. It was also alleged that Named Employee #2 may have engaged in a conflict of interest that he did not disclose and that Named Employee #3's decision to arrest the Complainant instead of Named Employee #1 may have been unprofessional and may have constituted an abuse of his discretion.



---

**SUMMARY OF INVESTIGATION:**

**A. Incident, Investigation, and Arrest**

SPD officers were dispatched to a domestic disturbance that occurred at the residence of Named Employee #1 (NE#1). The call initially included an allegation by NE#1's former partner – the Complainant – that NE#1 had hit and pushed her, as well as that NE#1 had threatened her after the incident.

The initial investigation by the responding officers, who included Named Employee #2 (NE#2), indicated that both NE#1 and the Complainant contended that the other was assaultive. They each stated that they got into an argument outside of the residence near a parked vehicle, that the Complainant took physical control of their child in common, and that there was a physical altercation by the entry to their residence. Both the Complainant and NE#1 had red marks on their upper chest areas. NE#1, however, also had a red mark on her jawline, for which she requested medical assistance. Ultimately, the primary officer – referred to here as Witness Officer #1 (WO#1) – determined that he could not conclusively identify who was at fault. WO#1 screened the incident with his direct supervisor – Sergeant #1. As Sergeant #1 was friends with both NE#1 and the Complainant, he arranged for two supervisors from another precinct – Sergeant #2, who was assigned to the South Precinct, and Named Employee #3 (NE#3), a Lieutenant assigned to the East Precinct – to respond. For his part, NE#2 spoke with both the Complainant and NE#1. NE#2 further took photographs of the injuries suffered by both of the involved parties.

Sergeant #2 responded to the scene followed by NE#3. When NE#3 arrived, he spoke with WO#1 and Sergeant #2. He then interviewed the Complainant and NE#1. NE#3 recounted that NE#1 said that she and the Complainant separated several months prior and the Complainant moved out of the home. NE#1 and the Complainant had a custody agreement over their daughter. On the date in question, it was NE#1's turn to have the daughter. NE#1 noted that, just prior to the Complainant arriving at the home, the Complainant had served NE#1 with divorce paperwork. NE#1 acknowledged that she was upset by this, and that she and the Complainant got into an argument at the car. The Complainant tried to put the daughter into her vehicle, but the daughter was crying and did not want to go with the Complainant. NE#1 prevented this from occurring, and the child went inside where she remained with a nanny. The Complainant tried to enter the home and NE#1 physically prevented her from doing so. A scuffle ensued, during which the Complainant caused an injury to NE#1's face. The Complainant eventually returned to her vehicle prior to the police responding. NE#3 confirmed a minor injury to NE#1's face. NE#3 did not detect the odor of alcohol and did not believe that NE#1 was intoxicated.

NE#3 then spoke with the Complainant. He documented that the Complainant alleged that NE#1 threatened her while they were at the vehicle and assaulted her at that time by pushing her. The Complainant contended that she could smell alcohol on NE#1's breath and believed that this caused her to be unstable. The Complainant said that their child was on the front porch of the home and walked towards them. The Complainant stated that she told NE#1 to stop arguing in the presence of their child but NE#1 refused to do so. She stated that the child went into the home and that she proceeded up to the house to try to get the child and any other people inside to witness what was occurring. She said that NE#1 grabbed her twice while she was running up the stairs. She was just inside of the doorway at that time. NE#1 was yelling at her to leave and they got into a physical altercation, which included NE#1 placing her into a headlock. The Complainant said that, at one point, NE#1 put her hands on the Complainant's neck, but she indicated that her breathing was not impaired. NE#3 did not identify any injuries on the Complainant but noticed that her collarbone area appeared flushed.



Ultimately, NE#3 made the decision that there was probable cause to arrest the Complainant for domestic violence assault as he determined that she was the primary aggressor. In reaching this decision, he pointed to two primary pieces of evidence: first, that the Complainant was attempting to access the residence, where she did not live, and NE#1 was trying to remove her; and, second, that NE#1 had a noticeable injury to her jaw. The Complainant was taken into custody by officers, including NE#2. She was then transported from the scene. Prior to being transported, she was permitted to make a phone call, to move her vehicle, and to take some of the daughter's items out of the vehicle.

The Complainant later sought and obtained an order of protection against NE#1. As part of that order, NE#1 was required to surrender her firearms. She was further placed on administrative leave by SPD. The Seattle City Attorney's Office ultimately declined to file charges against either NE#1 or the Complainant citing proof issues and the fact that both parties had injuries.

In addition, given the Complainant's allegation that NE#1 assaulted her, an SPD Captain made an OPA referral. This investigation ensued.

## **B. OPA Investigation**

As part of its investigation, OPA reviewed the documentation generated concerning this incident, as well as the photographs taken of both NE#1 and the Complainant. OPA also reviewed the documents relating to the order of protection. Lastly, OPA interviewed the nanny, NE#1, NE#2, NE#3, WO#1, and Sergeant #1 (OPA did not interview Sergeant #2 as his testimony was deemed duplicative of WO#1 and NE#3).

OPA also sought to interview the Complainant. She initially indicated that she was willing to speak with OPA but then ceased responding to OPA's attempts to contact her. However, OPA was able to discern portions of her account from a review of the documents supporting her application for the order of protection. In that document, she re-asserted that NE#1 assaulted her, as well as that NE#1's verbally harassed her and was intoxicated. She further asserted that NE#1 continued to harass her after the incident and, on at least one occasion, NE#1 used an unmarked police vehicle to stalk the Complainant and her current partner.

The nanny confirmed that she was inside of the house at the time of the incident and that she did not witness what occurred. The nanny said that she, NE#1, and the daughter were inside of the house when NE#1 received an email from the Complainant containing divorce paperwork. NE#1 started crying and she and the nanny moved to the front room so that the NE#1 was not upset in front of the daughter. At that time, they saw the Complainant drive up. NE#1 told the daughter that the Complainant was there and they both went outside. The nanny remained in the residence. The nanny then heard an argument taking place between NE#1 and the Complainant. The nanny heard someone saying to the daughter to go into the house. The nanny got the daughter and brought her into the backyard. The daughter told the nanny that the Complainant was putting her in the car but that she was crying and did not want to go. The daughter said that she kicked the Complainant to prevent herself being put into the car. The nanny said that, at one point, she heard NE#1 tell the Complainant: "Get the fuck out of my house." The nanny said that it was possible that there was an ongoing struggle, but she could not tell.

WO#1's statement was consistent with his reports and with the BWV. He told OPA that, from his perspective, the Complainant's account was clear and consistent while NE#1's recitation had some inconsistencies. He stated that, while NE#1 had a scratch on her face, the injuries to the Complainant's chest were more significant than those to



NE#1's chest. WO#1 said that he could not see any obvious signs of intoxication on NE#1. WO#1 explained that, while it was clear that a physical altercation occurred, the only evidence available was the statements of the involved parties. He noted that he spoke to his direct supervisor – Sergeant #1 – who disclosed that he was friends with both the Complainant and NE#1. Accordingly, Sergeant #2 and NE#3 were dispatched to the scene. NE#3 ultimately determined that the Complainant should be arrested. WO#1 indicated that, had the decision been his to make, he would have arrested NE#1 because of the inconsistencies in her statement.

Sergeant #1 said that he did not respond to the scene because he was friends with both NE#1 and the Complainant. He said that NE#2 called him and apprised him of the incident. He stated that NE#2 disclosed that he knew NE#1 from working together in the Training Unit several years prior. Sergeant #1 asked NE#2 if he had a personal relationship with NE#1 and NE#2 said that he did not. Sergeant #1 advised NE#2 that, given this, it was permissible for NE#2 to respond to the scene.

NE#2 responded to the scene and assisted in the investigation. He was not the primary officer. While he knew of NE#1, he did not consider her a friend or feel that he had a conflict of interest. He further noted that he vetted the appearance of a conflict through Sergeant #1. He described that, during his time on scene, he treated NE#1 like any other involved party in a criminal case. He noted that he pat frisked her, he restricted her movements inside of the home (including searching the bathroom before allowing her to use it), and that he stood outside the bathroom while NE#1 was inside. NE#2 said that, at one point, he asked to not be assigned to stay with NE#1 and moved over to watch the Complainant. He recalled telling the Complainant that he may have met her a few years back and she agreed. He said that this occurred when he responded to another call next door to the residence and both NE#1 and the Complainant were present. NE#2 eventually interviewed both parties and photographed them. NE#2 said that did not make any decisions concerning the Complainant's arrest and that he was not consulted regarding this decision. He noted that this was the responsibility of WO#1, the primary officer.

NE#3 recalled that WO#1 believed that the Complainant was more credible. However, NE#3 reached a different assessment after speaking with both parties. NE#3 noted that he had more experience than WO#1 and this may have been the reason for their divergent determinations. NE#3 stated that, in his opinion, NE#1's account was more believable than that provided by the Complainant. He further pointed to the two factual determinations outlined in his report that suggested to him that probable cause existed to arrest the Complainant. Again, NE#3 stated that he placed significant evidentiary value on the fact that the Complainant was admittedly trying to access the residence, which she did not have a legal right to be in, and that he viewed NE#1's facial injury as the most significant between those suffered by the involved parties. NE#3 asserted that WO#1 appeared to disagree with him from a review of WO#1's body language. However, NE#3 stated that Sergeant #2 concurred in the decision to arrest the Complainant. NE#3 denied that his decision-making was informed by NE#1's status as an SPD employee and he stated that he did not have any personal relationship with her that would have influenced his actions.

NE#1 told OPA that she received an email from the Complainant with divorce paperwork. The Complainant then came over to the house to drop off items for the daughter. At that time, NE#1 went outside, and they got into an argument. The Complainant lifted up the daughter and tried to take her; however, NE#1 prevented the Complainant from doing so and brought the daughter inside. The Complainant tried to access the residence and NE#1 prevented her from doing so, telling her to get the "fuck" out. The Complainant then left, and NE#1 went inside to check on the daughter, who was with the nanny at the time. NE#1 acknowledged that she was upset at the Complainant and that she may have used profanity towards her. She denied threatening her.



At one point, the daughter was outside and stood behind NE#1. The Complainant came around NE#1 and took hold of the daughter. NE#1 pulled the daughter away and the daughter ran back inside. The Complainant then rushed towards the residence and NE#1 followed her. She did not remember who got to the door first. NE#1 said that the Complainant made it into the residence and got as far as a mantle that was about 13 feet inside the front door. NE#1 recalled that the Complainant pushed her into the mantle when she was trying to block the Complainant from coming further into the house. NE#1 yelled at the Complainant to get out. The Complainant ultimately did so. The Complainant called 911. NE#1 did not do so and said that this was because she was taking care of her daughter. She did call Sergeant #1 but got off the phone with him when she learned that he was working that day.

NE#1 opined that her injuries were caused when she was pushed into the mantle. She did not recall why she did not mention being pushed into the mantle to the responding officers. She did not know how the Complainant suffered redness to her chest. NE#1 said that she did not push the Complainant and that she did not place the Complainant into a headlock or chokehold.

NE#1 stated that, while there were cameras outside of the residence that would have captured the vicinity of where the incident occurred, they were not recording at the time. This was the case even though they were recording earlier that day. NE#1 opined that this was due to spotty internet and that this had occurred previously.

With regard to the Complainant's allegation concerning NE#1's improper use of an unmarked police vehicle, NE#1 stated that the vehicle she possessed was a taskforce vehicle and did not belong to SPD. She stated that, based on her understanding, she could use that vehicle for limited personal reasons. When asked whether she ever drove to the Complainant's current partner's home, she stated that she did on one occasion. She explained that the Complainant had been staying out late into the evening and NE#1 believed her to be seeing someone else. She drove by the partner's home to see whether the Complainant was there. She said that she was looking for the Complainant, not for the partner. She said that she took her work car because they only had one other personal vehicle at the home, and she wanted to leave it there if it was needed in an emergency.

Lastly, NE#1 said that she knew NE#2 only in passing. She denied that they were friends. She recalled that he may have once responded to a call in her neighborhood.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegation #1**

##### ***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

The Complainant alleged that NE#1 violated the law by assaulting her. SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

Ultimately OPA finds the question of whether NE#1 engaged in assault to be inconclusive. OPA reaches this conclusion for several reasons. First, there were no independent witnesses to what occurred. Second, the video recording system at NE#1's home did not capture what occurred because of a potential internet issue. Third, both NE#1 and the Complainant had injuries that were consistent with assaultive behavior on the other's part. Fourth, there was a difference in opinion between WO#1 and NE#3 as to which one was the primary aggressor.



All of these factors, when taken together, prevent OPA from reaching a determinative conclusion. Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained (Inconclusive)**

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.)

It was alleged that NE#1 was unprofessional in two main respects: first, when she verbally accosted and physically assaulted the Complainant during the incident; and, second, when she continued to harass the Complainant after the fact and drove to the Complainant’s partner’s home in her work vehicle.

For the same reasons as discussed above, the first category of unprofessionalism is inconclusive. However, there is sufficient evidence to make a finding on the second category. NE#1 did not dispute that she drove to the Complainant’s partner’s residence in her taskforce vehicle. She said that she did so to locate the Complainant, not to stalk her or target the partner. As indicated below, NE#1 asserted that this taskforce vehicle did not belong to SPD and was not governed by SPD policy.

While OPA concurs that the taskforce vehicle is not governed by SPD policy and, instead, falls under the purview of Homeland Security, OPA concludes that her driving a law enforcement vehicle to the Complainant’s partner’s home late at night was improper and unprofessional. While OPA cannot prove that NE#1 sent the Complainant threatening and insulting messages, as the Complainant contended, or that NE#1 monitored her using security video, it would not be unreasonable for either the Complainant or the partner to have felt concerned and/or threatened by NE#1’s use of her taskforce vehicle. Moreover, OPA believes it safe to assume that a partner agency would be extremely concerned by this conduct and the possible liability that it could subject the agency to.

OPA believes that this rises to the level of conduct that undermines public trust and confidence in NE#1 and the Department. Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #3**

***13.080 - Use of Department Vehicles 12. Employees Will Not Use a Department Vehicle for Reasons Outside the Course and Scope of Their Job Duties.***

SPD Policy 13.080-POL-12 states that: “Employees will not use a Department vehicle for reasons outside the course and scope of their duties.” OPA finds it clear that using a Department vehicle to drive past the Complainant’s partner’s residence would be contrary to this policy. However, the operative question is whether a taskforce vehicle qualifies as a Department vehicle under the policy.



In evaluating this question, OPA reached out to the Captain of NE#1's unit who confirmed that, because the lease for NE#1's vehicle was paid for by Homeland Security, the vehicle and the use thereof was governed by Homeland Security's policies. This was verified by Homeland Security.

Accordingly, OPA finds that a taskforce vehicle that is paid for by another agency is not a vehicle governed by SPD policy. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #2 - Allegation #1**

***5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest***

In her application for the order of protection, the Complainant contended that she was arrested due to a conflict of interest on NE#2's part. SPD Policy 5.001-POL-18 requires that Department employees avoid conflicts of interest. In this regard, the policy specifically provides the following: "Employees will not engage in enforcement, investigative, or administrative functions that create or give the appearance of conflicts of interest." This also applies where any person with whom the employee has a personal relationship is involved in the event." (SPD Policy 5.001-POL-18.)

NE#2 denied that he had a personal relationship with NE#1 and said that he only worked with her periodically while at the Training Unit. NE#1 confirmed that this was the case.

NE#2 further stated that he did not influence the decision to arrest the Complainant or offer his opinion on this matter to anyone involved in the decision-making. This was verified by the BWV.

He noted that he treated NE#1 like any other potential suspect, including pat frisking her and limited her movements while she was under investigation.

In addition, he stated that he called Sergeant #1 to ensure that he was permitted to respond to the call, and Sergeant #1 did not direct him not to do so or state that it would be improper.

OPA deems the above to be substantial evidence indicating that NE#2 did not engage in a conflict of interest or conduct that could raise the appearance of a conflict. OPA also determined that, at the time of this incident, there were just three available cars that could respond to the scene, one of which being NE#2. This lack of other resources resulted in him needing to go to the scene, despite his being aware of who NE#1 was.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

**Named Employee #2 - Allegation #2**

***5.001 - Standards and Duties 19. Employees Must Disclose Conflicts***

SPD Policy 5.001-POL-19 requires that Department employees disclose potential conflicts of interest.





As discussed above, the evidence established that NE#2 called Sergeant #1 to disclose the potential of a conflict. He was told that he could still respond to the scene. Given this, NE#2 complied with the requirements of this policy and OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #3 - Allegation #1**

***5.001 - Standards and Duties 6. Employees May Use Discretion***

It was alleged that NE#3 may have abused his discretion when decided to arrest the Complainant instead of NE#1.

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

OPA notes that NE#3’s assessment of the evidence was different from that held by WO#1. Specifically, while NE#3 felt that there was probable cause to arrest the Complainant, WO#1 disagreed and believed that NE#1 should have been arrested. While WO#1 felt that the Complainant’s account was more consistent and that NE#1 changed details, NE#3 felt differently. NE#3 further pointed to the undisputed fact that the Complainant was in a place – the residence – where she had no legal right to be and that he deemed NE#1’s injuries to be more significant.

In assessing this case, OPA cannot say that NE#3’s interpretation of the evidence was so unreasonable to have risen to an abuse of his discretion. As stated above, there were no witnesses to this incident and the officers were faced with the dueling accounts of the involved parties. OPA cannot establish that NE#3’s analysis and weighing of these statements was improper or, for that matter, violated his discretion and SPD policy.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #3 - Allegation #2**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

It was alleged that NE#3 was further unprofessional when he decided to arrest the Complainant. OPA’s finding that NE#3 did not abuse his discretion also dictates the conclusion that he was not unprofessional. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**